

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
CCP No. 86 of 2021**

Prakash Kumar
Rep. by his Power of Attorney,
Nirupama Devi.P

..... **Complainant**

Vs.

M/s. Fortune Infra & Constructions Pvt Ltd.,
Rep. by its Director, Jayaram Ganapathy

..... **Respondent**

Complainant : Rep by M/s. V. Manohar, Advocates.

Respondent : Rep by Mr. V. Suresh Kumar, Advocate.

Heard on : 30.09.2022

Delivered on : 25.01.2023

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of a flat with interest, and costs is filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Averments of the complainant, in brief, as follows:

(a) The complainant was allotted a Flat No. S-4 in the "Aqua Sphere" of the respondent's project situated at Semencherry – OMR, Tambaram Taluk, Kancheepuram District, Chennai for a sum of Rs.50,36,324/-. The construction agreement and the sale deed were both executed on 22.08.2014. The UDS was also registered on 22.08.2014. The complainant further avers that the respondent had committed to deliver the flat in 18 months from the date of signing the agreement with a grace period of 3 months projecting the delivery date to 22.05.2016 including the grace period.

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(b) The complainant avers that he has paid the entire amount of Rs.50,36,324/- leaving Rs.1,48,757/- to be paid towards VAT and service tax charges. The complainant avers that since the respondent could not complete the flat in the stipulated time, a legal notice was sent to him on 18.09.2017, in the reply to which the respondent conceded to the delay which they claimed was due to delay in obtaining the power connection and had given false statement claiming the construction work to be complete.

(c) The complainant avers that any way, without completing the balance requirement as well as amenities, the flat cannot be considered to be completed. The complainant has taken the issue to the State Consumer Disputes Redressal Commission, Chennai where it is pending for consideration. The complainant therefore seeks refund of amount paid by him with interest and seeks compensation.

3. **Counter averments of the respondent, in brief, as follows:**

(a) The respondent begins by submitting that as per the construction agreement he has kept up the promise of delivering within 18 months from the date of signing the agreement with a grace period of 3 months. He submits that the complainant had already done his house warming ceremony and collected the apartment keys, the respondent had however not been able to get the main EB power due to which he could not initiate the lift commissioning. The respondent goes on to submit that the apartment had been received by the complainant with full satisfaction and, that the only delay was in getting the EB connection for which too the respondent had made all the efforts by perusing the issue with the Authorities at all levels.

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(b) On the direction of the EB Authority, the erection was completed on May 2017 and finally the power came through only on 27.07.2017. The EB Consumer No. 092950013427 in the name of the complainant which the respondent avers is enough to prove the handing over of the same and the possession of the complainant. The respondent also avers that the complainant has suppressed the facts of the complaint pending in the Consumer Court in Column (6) of the complaint. Thus, the complainant had not come up with clean hands and thus pleads for dismissing the CCP.

4. An attempt to settle the matter amicably has failed.

5. Both the parties have filed their respective evidence on affidavit with documents.

6. On the basis of the rival contentions of the parties, the following points arise for determination:

(i) Is the complainant entitled to claim refund due to delay in delivery?

(ii) What are the reliefs made out?

7. **Answer for Point No (i):-**

(a) The complainant was allotted Flat No. S-4 on 05.05.2014. The total apartment cost was shown as Rs.50,36,324/- (Ex.A2). The construction agreement was entered on 22.08.2014 (Ex.A3) and on the same day the sale deed was also executed (Ex.A4). The date of delivery was promised in 18 months from the date of signing the agreement with a grace period of 3 months projecting the delivery date to 22.05.2016 including the grace period. The respondent submitted that the complainant had obtained the keys of the apartment well in time and also that house warming ceremony is also been done by the complainant within the stipulated date of delivery.

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(b) The respondent having claimed to have handed over the keys to the complainant has not submitted any evidence to show the same. He has on the other hand admitted that the EB connection had not been obtained due to which the lift was not operational. He has nowhere claimed that the electricity supply to the complainant's unit was completed. The complainant on the other hand has given a legal notice to the respondent on 18.09.2017 (Ex.A8) wherein he had mentioned that he had paid all the amount except Rs.1,48,758/- pending to be paid and clearly mentions that the flat had not been handed over.

(c) The respondent replying to the notice (Ex.A9) reiterates that the house warming was done and keys collected and also mentioned about the EB connection not coming through which has delayed the connection to the complainant's apartment. The points therefore to be decided is *Whether as claimed by the respondent, the apartment was handed over to the complainants as agreed within the due date or there was delay in doing so.*

(d) It clearly emerges out that the EB connection had not come in till finally on 27.07.2017. The respondent had not been able to give any evidence to show that he had handed over apartment to the complainant by giving over the keys. The respondent has also not raised any demand for payment of balance amount of Rs.1,48,758/- which was yet to be paid by the complainant. If the respondent had completed the apartment and handed over, the payment of Rs.1,48,758/- the balance amount ought to have been completed or atleast demanded without which in the normal course of business, the apartment would not have been handed over.

(e) There is no notice or correspondence made over from the respondent to the complainant even in the duration of the hearing of this CCP which will indicate that the respondent wanted to handed over the flat to the

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complainant and also already claim the balance amount yet to be paid by the complainant to the respondent. With the given facts, it can only be inferred that the apartment was not handed over to the complainant on the promised date i.e. 22.05.2016 (including the grace period), thus, entitling the complainant to claim the refund has sought for.

(f) The project is delayed and the option to continue or otherwise falls on the complainant. In this situation, where the apartment is not handed over in time and the complainant is seeking refund, the respondent has no other option but to comply with this as laid down in Section 18 (1) (b) of the RERA Act and thus the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.53,51,141/- from the respondent.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 7.30% per annum which was the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 9.30% p.a for the entire amount paid from the date of respective payment till repayment by the respondent. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows:-

- (i) The respondent shall pay the amount at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 of this order within 30 days of issue of this order.

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- (ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (iii) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
- (iv) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondents.

Sd/- 25.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- Nirupama Devi.P

RW-1 --- Jayaraman Ganapathy

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Brochure of project
Ex.A2	05.05.2014	Allotment letter
Ex.A3	22.08.2014	Construction agreement
Ex.A4	22.08.2014	Sale deed
Ex.A5	22.08.2014	Memorandum of deposit of title deed
Ex.A6	03.10.2016	E-mail from respondent
Ex.A7	---	Proof of payment of registration
Ex.A8	18.09.2017	Legal notice by complainant
Ex.A9	22.11.2017	Reply to legal notice

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Ex.A10	08.01.2018	Copy of the complaint in C.C. 51 of 2018
Ex.A11	14.06.2018	Version filed by the respondent in C.C. 51 of 2018
Ex.A12	09.08.2018	Proof affidavit filed by complainant
Ex.A13	November 2018	Proof affidavit filed by respondent
Ex.A14	04.01.2021	Letter from HDFC Bank
Ex.A15	13.01.2021	Special power of attorney

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Ex.Nos	Date	Documents Name
Ex.B1	---	Plumbing work completed – Photograph
Ex.B2	---	Elevation – Photograph
Ex.B3	---	Transformer - Photograph
Ex.B4	---	Lift work completed – Photograph
Ex.B5	---	Hand railing work completed – Photograph
Ex.B6	---	Drainage work completed – Photograph
Ex.B7	---	Car parking work completed – Photograph
Ex.B8	---	Electrical work completed - Photograph

Sd/- 25.01.2023
SUNIL KUMAR, I.P.S (Retd)
 SINGLE MEMBER
 TNRERA, CHENNAI

